IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

FIRST APPEAL NO. 1063 OF 1987
WITH
FIRST APPEAL NO. 587 OF 1990
WITH
FIRST APPEAL NO. 588 OF 1990

FIRST APPEAL NO. 1063 OF 1987

Purshottam Narayan Mehta ..Appellant
(Orig. Opp. 2)

Vs.

1.Smt. Mamati Jayram Ambonkar
2.Mr. Prabhakar Ambaji Ambonkar
3.The Oriental Fire and General
Insurence Company Ltd.
4.Shri Abdul Rahiman Ishamuddin Jamdar
5.Shri Mohamad Ayyas Ali Faki. ..Respondent.
(No.1 Applciant and Nos. 2 to 4 original Opponents).

Mr. Dushyant PUnekar h/f Mr. R.L. Patil for the appellant.
Mr. vivek Salunke with Mr. Prafulla Shah for respondent NO.1.

FIRST APPEAL NO. 587 OF 1990

Tbe Oriental Fire and General ..Appellant
Insurance Com. Ltd. Bombay- 400 020 (Orig. Opp. 3)

Vs.

1.Smt. Mamati Jayram Ambonkar
2.Mr. Prabhakar Ambaji Ambonkar
3.Purshottam Narayan Mehta
4.Shri Abdul Rahiman Ishamuddin Jamdar
5.Shri Mohamad Ayyas Ali Faki. ..Respondent.
(No.1 Applciant and Nos. 2 to 5 original Opponents Nos. 1,2,4, and 5).

Mr. S. G. Deshpande for the appellant.
Mr. Salunke with Mr. Prafulla shah for respondent NO.1.

FIRST APPEAL NO. 588 OF 1990

Tbe Oriental Fire and General Insurance Com. Ltd.
Bombay- 400 020 ..Appellant
(Orig. Opp. 3)

Vs.

1.Shantaram Anna Ambonkar
2.Mr. Prabhakar Ambaji Ambonkar
(deleted as per order dt.1/10/1991.
3.Purshottam Narayan Mehta
4.Shri Abdul Rahiman Ishamuddin Jamdar
5.Shri Mohamad Ayyas Ali Faki. ..Respondent.

Mr. S.G.Deshpande for for the appellant.

Mr. Dushyant Punekar h/f Mr. R.L. Patil and Seema Sarnaik for respondent NO.3.

CORAM : ANOOP V.MOHTA J.
DATE : 12TH DECEMBER, 2005.

ORAL JUDGMENT

. These are three appeals filed against the common order dated 31/3/1987, passed by the Motor Accident Claim Tribunal (Claim Tribunal), whereby, the appellant-Insurance Company, in first appeal No. 587 and 588 of 1990 i.e. original opponent No.3 and the appellant in First appeal No. 1063/1987, original opponent NO.2-owner of the vehicle, have been directed to pay an amount of Rs.64,800/- together with interest at 12 % p.a. from the date of petition till payment of

the amount and proportionate cost of the petition. Opponent No. 2 have been directed to pay an amount of Rs.14,800 and opponent No.3 to pay an amount of Rs. 50,000/- with interest on the respective amounts.

2. The learned Counsel appearing for the appellant in First Appeal No.1063/1987-opponent NO.2, basically contended, that in view of the Supreme Court's judgment in (G. Govindan V. New India Assurance Co. Ltd and others) (AIR 1999 S.C. 1398) and (Rikhi Ram and another V. Smt. Sukhrania and others) (AIR 2003 S.C. 1446) based on the provisions of sections 94, 95 and 103A of Motor Vehicles Act (4 of 1939), the Apex Court has made it very clear that so far as, the liability of Insurance Company is concerned, it does not cease in absence of an intimation of transfer of vehicle to the insurance company. It is specifically observed that the policy if not transferred in the name of transferee of vehicle, that itself can not be a ground to deny the compensation by the insurer to the victim or the legal representative of the victim. A factum of no initimation or intimation is an interse dispute between the transferor or transferee of the vehicle. The victim or such any heirs of the victim, should not be made to move here and/or

there for their respective claims. The fact that the vehicle was admittedly insured, and there was a Insurance policy on the date of incident, that itself according to me sufficient to consider the case of the victim to grant such compensation. This is a matter of statutory liability, under the Motor Vehicle Act.

3. The learned counsel appearing for the owner, opponent No.2 contended that there was initimation given and therefore, he was not liable to make such payment. The learned Judge, however, after considering the material on the record, clearly gave finding on the issue against opponent No.2, holding him to be liable, as he failed to prove the service of such intimation of transfer of ownership.

4. In this matter, admittedly, the incident took place on 22nd November, 1980 at about 9.30 p.m. As per the appellant in appeal No. 1063/1987, the vehicle was sold on 27/4/1983 to one Abdul - respondent No.4. The possession receipt was also obtained and it was already handed over to respondent No.4. As per the appellant, the Insurance Company was also informed about the said transfer. Respondent No 4 further transferred the

vehicle on 11/5/1982 to one Shri Mohammed Ayaz Ali. However, there is nothing on the record to prove the service of such intimation of the said vehicle.

5. The incident took place on 22/11/1980. The Insurance Company's liability is concerned, unless it is proved that the vehicle was actually transferred and recorded accordingly after the intimation, they are liable to make the payment, as per the Insurance policy. However, it is the case of the appellant-Insurance company that they have not received any such intimations on their record. Therefore, for the purpose of the case, the vehicle at the relevant time stood in the name of opponent No.2. Mere sending of intimation itself is not sufficient. What is necessary is to prove the receipt of the intimation by the Insurance Company. In the present case the Insurance Company denies the same, therefore, there is no reason to accept the said contention and or the case of the original owner. The factum of such transaction unless duly intimated to the Insurance Company, and recorded accordingly remains in the name of the person in whose name the vehicle was registered in the record of the Insurance Company. The Insurance Company therefore, on the date of incident,

has admittedly not made any change or unable to change the name of the owner in the register. Therefore, considering this, I am of the view that on 22nd November, 1983 the vehicle stood in the name of the original owner as they failed to prove the service of the intimation of the transfer of vehicle, as required under the law.

. The learned Trial Court therefore, in this background directed opponent No.2. i.e. appellant in First Appeal No. 1063/1987 to make the payment of balance amount of Rs. 14,800/-, based on the Insurance Policy, on the record.

6. The liability of Insurance Company i.e. Appellant in First Appeal No. 587/1990 and 588/1990 remained intact. There is no such challenge about the liability to the accident of Rs.50,000/- so far as, the policy produced on the record.

7. The learned Counsel appearing for the appellant-owner in First Appeal No. 1063/1987 however, based on the Judgment of G. Govindan (Supra) contended that the liability of Insurance Company cannot be

restricted to the extent of Rs. 50,000/-. There is no justification on the record to restrict such liability. The Insurance Companies are liable to make payment of full amount as awarded by the Motor Accident Tribunal. I am not inclined to accept this submission in view of the clear finding given by the Tribunal that the liability of the Insurance Company-opponent No.3, as per the Insurance Police produced on the record was limited to Rs. 50,000/-. The provisions of Motor Vehicle Act and the scheme framed thereunder in respect of the liability of Insurance Company is very clear. Apart from the liability of the contract between the parties, the statutory liability, as expressed cannot be overlooked. The liability as taken note of is limited to Rs. 50,000/-. It is settled that the insurance company cannot be directed to make payment beyond the contractual liabilities. In view of this the liability to the extent of Rs. 50,000/-, is correct.

8. The appellant's are the insurance Company in First Appeal Nos. 586 and 588 of 1990. There are common issues to be considered based on the provisions of Motor Vehicle Act in reference to the liability and or recovery of the amounts from other transferee of the

vehicle in question i.e. respondents 4 and 5 of these appeals. Without going to that controversy, at this stage, once there is a clear finding, and there is no material to prove the service of the intimation to the insurance Company, the Motor Accident Tribunal is right in directing opponent No.2 - original owner of the vehicle and Insurance Company to make the payment to the victims respondents 1 and 2 in First Appeal No.1063/1987, 587/1990 and 588 of 1990.

9. The learned Counsel appearing for the claimants, is not sure whether the amounts has been withdrawn or not, if amounts has been withdrawan, there is no further order necessary, but if not withdrawn, the original claimants are free to withdraw the said amount.

10. The impugned Judgment and order, restricting the liability of the Insurance Company to the extent of Rs. 50,000/-, with interest and the liability of the owner opponent No.2, to Rs. 14,800/- with interest is confirmed.

11. Taking all this into account, All the First Appeals are therefore, dismissed. No order as to costs.

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[ANOOP V. MOHTA, J.]